

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DEONTE DAVIS

Plaintiff,

v.

CITY OF PHILADELPHIA, et al.,

Defendants.

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Civil Action

No. 2:21-CV-05616-KSM

ORDER

AND NOW, this _____ day of _____, 2022, upon consideration of Defendant City of Philadelphia's Motion to Compel Independent Medical Examinations, and any responses thereto, it is hereby ORDERED and DECREED said Motion is GRANTED and plaintiff shall attend independent medical examinations within the next 90 days as follows:

- (1) On November 11, 2022 at _____, plaintiff shall attend a neurological examination at IMX MEDICAL MANAGEMENT SERVICES, INC., 333 EAST CITY AVENUE, TWO BALA PLAZA, SUITE 600, BALA CYNWYD, PA 19004, to be performed by Dr. SANJEEV GARG. The examination may include medical and diagnostic evaluation, including any tests that Dr. GARG deems necessary to evaluate plaintiff. Plaintiff shall not be accompanied by counsel or other representation during this examination.
- (2) On _____, 2022 at _____, plaintiff shall attend a psychiatric examination at IMX MEDICAL MANAGEMENT SERVICES, INC., 333 EAST CITY AVENUE, TWO BALA PLAZA, SUITE 600, BALA CYNWYD, PA 19004, to be performed by Dr. ROBERT C. COHN. The examination may include medical and diagnostic evaluation,

including any tests that Dr. COHN deems necessary to evaluate plaintiff. Plaintiff shall not be accompanied by counsel or other representation during this examination.

BY THE COURT:

JUDGE KAREN SPENCER MARSTON

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DEONTE DAVIS

Plaintiff,

v.

CITY OF PHILADELPHIA, et al.,

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Civil Action

No. 2:21-CV-05616-KSM

DEFENDANT’S MOTION TO COMPEL INDEPENDENT MEDICAL EXAMINATIONS

Defendant, the City of Philadelphia, by and through its undersigned counsel, hereby files this Motion to Compel Independent Medical Examination (“IME”) of Plaintiff, Deonte Davis, pursuant to Federal Rule of Civil Procedure 35. In support of this motion, Defendant incorporates the attached Memorandum of Law. Defendant respectfully requests this Court to issue its proposed order requiring Plaintiff to submit to an IME within the next 90 days.

Date: September 21, 2022

/s/ Michelle V. Barone

Michelle V. Barone

Assistant City Solicitor

Pa. Attorney ID No. 318237

City of Philadelphia Law Department

1515 Arch Street, 14th Floor

Philadelphia, PA 19102

215-683-5217

michelle.barone@phila.gov

**IN THE UNITED STATES DISTRICT COURT
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DEONTE DAVIS

Plaintiff,

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Civil Action

No. 2:21-CV-05616-KSM

**MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANT’S MOTION TO COMPEL INDEPENDENT MEDICAL EXAMINATIONS**

I. INTRODUCTION

Plaintiff claims Defendant’s conduct caused him to suffer injuries and damages that have rendered him wheelchair bound with limited mobility. Because of the nature of Plaintiff’s claims and the complex medical basis thereof, Defendant seeks to have independent medical professionals assess Plaintiff. Plaintiff will not agree to this examination, and so, pursuant to Rule 35 of the Federal Rules of Civil Procedure, Defendant City of Philadelphia (“Defendant”) now seeks to compel Plaintiff’s attendance at such examination, and respectfully submits this Memorandum of Law in support of its motion to compel Plaintiff Deonte Davis (“Plaintiff”) to submit to neurological and psychiatric examinations by two medical providers with expertise in those respective areas.

Plaintiff has placed his injury and mobility in controversy in this case. Defendant has good cause to request this examination because there is a genuine dispute as to the extent of his injuries and whether they rise to the severity alleged. To adequately prepare its defense against Plaintiff’s claims, Defendant now seeks an order compelling Plaintiff to submit to a neurological and psychiatric independent medical examination (“IME”).

II. FACTUAL AND PROCEDURAL BACKGROUND

On April 11, 2021, Plaintiff filed an Amended Complaint against Defendant, alleging that, at the time of his 2019 incarceration at Curran-Fromhold Correctional Facility (“CFCF”), he suffered from a seizure disorder which made him a “qualified individual with a disability” under the Americans with Disabilities Act and the Rehabilitation Act. (Am. Compl. ¶ 8.) He asserts that following a fall, he began to experience “paralysis symptoms” and was diagnosed with “Functional Neurological Disorder, Functional Limb Weakness, and urinary issues.” (Am. Compl. ¶¶ 15, 38.) In his Amended Complaint, Plaintiff contends that Functional Neurological Disorder (“FND”) is “not always well understood by medical professionals” and suggests that the fields of neurology and psychiatry are best suited to understand and evaluate the condition. (*Id.* at ¶ 41.) Additionally, Plaintiff claims that he did not receive appropriate treatment for FND while incarcerated. (*Id.* at ¶44.) Plaintiff seeks an award of compensatory damages for, among other things, FND, Plaintiff’s claimed inability to move without the assistance of a wheelchair, and Plaintiff’s limited mobility in his lower extremities. (*Id.* at ¶ 55.)

Because Plaintiff seeks damages related to a life-changing diagnosis that he asserts is often misunderstood, Defendant sought IMEs with two physicians who specialize in the medical fields that Plaintiff asserts are most appropriate to understand and evaluate FND—neurology and psychiatry. On August 18, 2022, Defendant informed Plaintiff that an IME was scheduled with Dr. Sanjeev Garg (Neurology) for September 28, 2022 and an IME was scheduled with Dr. Robert C. Cohn (Psychiatry) for September 27, 2022. Plaintiff waited 32 days to note his objection. Less than ten days prior to the scheduled IMEs, on Saturday, September 17, Plaintiff refused to stipulate to these long-scheduled IMEs, which in turn necessitated cancellation of the appointments.

On September 19, 2022, counsel for the parties met and conferred to discuss their respective positions regarding the appropriateness of an IME. Given that Plaintiff's claimed damages center around the precise injury on which Defendant seeks IMEs, Defendant suggested it was imminently reasonable to have independent medical professionals with expertise in the area of claimed injury assess Plaintiff. The parties were unable to reach a resolution. This motion follows.

III. LEGAL ARGUMENT

Federal Rule of Civil Procedure 35(a) states in pertinent part, "[t]he court may order a party whose mental or physical condition is in controversy to submit to a mental examination by a suitably licensed or certified examiner." Fed. R. Civ. P. 35(a)(1). To obtain the court's permission to conduct a mental or physical examination of a plaintiff, a defendant must demonstrate that plaintiff's mental condition is "in controversy" and that "good cause" exists to conduct the requested examination. *Schlagenhauf v. Holder*, 379 U.S. 104, 118–19 (1964). A plaintiff who "asserts mental or physical injury . . . places that mental or physical injury clearly in controversy and provides the defendant with good cause for an examination to determine the existence and extent of such asserted injury." *Id.* at 119. Where a plaintiff does not place his condition in controversy, another party may nonetheless "make an affirmative showing that [plaintiff's] mental or physical condition [is] in controversy and that there [is] good cause for the examinations requested." *Id.* at 119–20. The rule governing mental examinations "should be construed liberally in favor of granting examinations." *Prather v. Prudential Fox & Roach*, No. CIV.A. 07-1264, 2008 WL 11431050, at *1 (E.D. Pa. March 27, 2008).

Here, Plaintiff placed his alleged seizure disability, injury, and FND diagnosis in controversy. He has not merely included FND in a list of claimed injuries, but rather devoted

seven full paragraphs, including 12 footnotes citing medical and legal publications on the issue, of his Amended Complaint to describing the condition, the degree to which it is misunderstood, his prognosis, and the alleged inadequacy of the treatment received while incarcerated at CFCF. (Am. Compl. at ¶¶ 38–44.) Defendant cannot meaningfully defend against these allegations without the benefit of an independent examination to determine the existence and extent of the injury asserted. The detail with which Plaintiff alleged this purported harm, the complexity of his conditions, and his footnoted contentions regarding the alleged failure to properly treat it would each support the requisite good cause to grant a Rule 35 mental or physical independent examination.¹ Together, it is beyond dispute that Defendant has established “good cause for an examination to determine the existence and extent of such asserted injury.” *Schlagenhauf*, 379 U.S. at 119.

IV. CONCLUSION

Based on the foregoing, Defendant, the City of Philadelphia, respectfully moves for an order compelling Plaintiff to submit to neurological and psychiatric IMEs within the next 90 days.

Date: September 21, 2022

/s/ Michelle V. Barone
 Michelle V. Barone
 Assistant City Solicitor
 Pa. Attorney ID No. 318237
 City of Philadelphia Law Department
 1515 Arch Street, 14th Floor
 Philadelphia, PA 19102
 215-683-5217
 michelle.barone@phila.gov

¹ Intervening events have also raised questions as to the severity of the injury Plaintiff asserts. During a period of release from CFCF, Plaintiff was arrested by the Philadelphia Police Department for fleeing and eluding charges that stemmed from a foot pursuit. Such a pursuit is inconsistent with the severity of the injuries claimed here. However, on August 1, 2022, Plaintiff entered a guilty plea on that charge.

EXHIBIT A

From: Gina.LaRubbio@imxmed.com
To: nia@alcenter.org
Cc: [Michelle Barone](#)
Subject: Claim# EDPA 21-5616
Date: Tuesday, August 16, 2022 3:25:53 PM
Attachments: [20220928-Garg, MD-IME-IMX Confirmation letter with CX-NS fees.pdf](#)
[20220927-Cohn, MD-IME-IMX Confirmation letter with CX-NS fees.pdf](#)

External Email Notice. This email comes from outside of City government. Do not click on links or open attachments unless you recognize the sender.

First Name: Deonte
Last Name: Davis
DOB: 6/2/1997
CaseID: 324073

Good afternoon,

Please see the attached IME notices for your client and advise if there are any issues with the dates/times.

Gina

See attached file(s):

20220928-Garg, MD-IME-IMX Confirmation letter with CX-NS fees.doc
20220927-Cohn, MD-IME-IMX Confirmation letter with CX-NS fees.doc

Our goal is to meet your needs in the most effective and efficient way possible. Should you need to contact IMX as a follow up to this notice, please contact our Client Service Team @ 484-329-7000 or via email clientservices@imxmed.com

You can now view all your case documents on the IMX Web Portal
<https://portal.imxmed.com/networks/default.aspx>

If you are not an IMX portal user and would like to learn more about the experience, please email help@imxmed.com for additional information.

Gina LaRubbio
IMX Medical Mgmt Services
1700 Paoli Pike
Malvern, PA 19355
Phone (484) 329-7000
Fax (484) 329-7095
Direct Dial (610) 632-4598

Email Gina.LaRubbio@imxmed.com

*Click [Here](#) to send a new referral to IMX

Confidentiality Notice:

The information in this E-mail message is legally privileged and confidential information intended only for the use of the individual(s) named above. If you, the reader of this message, are not the intended recipient, you are hereby notified that you should not further disseminate, distribute, or forward this E-mail message. If you have received this E-mail in error, please notify the sender.

Thank you

Independent Medical Evaluation Confirmation Letter

Today's Date: 8/16/2022

RE: Referred By: City of Philadelphia / Law Department
Claimant: Deonte Davis
Claim # : EDPA 21-5616

Dear: Nia Holston

We are confirming on behalf of City of Philadelphia / Law Department that an Independent Medical Evaluation has been scheduled as follows:

Appt. Date: 9/27/2022
Time: 9:00 AM *Please arrive 15 minutes prior.*
Physician: Robert C. Cohn, MD (Psychiatry)

Location: IMX Medical Management Services, Inc.
333 East City Avenue, Two Bala Plaza
Suite 600 (Enter via St. Asaph's Road)
Bala Cynwyd, PA 19004

The referring company, as listed above on this letter, will obtain and provide the necessary medical records to IMX for the doctor to review; but any additional X-ray films, MRIs and/or any other pertinent medical records you may have in your possession is encouraged to bring with you on the day of your appointment. If you have any questions or concerns, please contact us at 1-484-329-7000.

If your client requires an interpreter or planning to have anyone accompany you to this evaluation please contact IMX at least 72 hours prior to the evaluation as policies regarding this may vary by physician. If planning to bring anyone to this evaluation, including a nurse case manager, please contact our scheduling department for approval.

If you are not able to keep the scheduled appointment contact IMX upon receipt of this letter. Failure to provide sufficient notice of at least 7 business days will result in a "Late Cancel" fee in the amount of \$1,400.00 which will be the responsibility of you (claimant) or your client. Failure to appear for the examination will result in a "No-Show" fee in the amount of \$1,400.00 which will be the responsibility of you (claimant) or your client.

Please bring one form of Photo Identification with you and inform the receptionist upon signing in which Physician you are there to see. If you have any questions or concerns, please contact us at 1-484-329-7000. **For directions please reference our website, www.imxmed.com, click on the office location tab.**

Sincerely,
Gina LaRubbio
IMX Medical Management Services
cc: Michelle V. Barone / City of Philadelphia / Law Department

Addressee:

Nia Holston
ABOLITIONIST LAW CENTER
PO Box 31857
Philadelphia, PA 19104

Independent Medical Evaluation Confirmation Letter

Today's Date: 8/16/2022

RE: Referred By: City of Philadelphia / Law Department
Claimant: Deonte Davis
Claim # : EDPA 21-5616

Dear: Nia Holston

We are confirming on behalf of City of Philadelphia / Law Department that an Independent Medical Evaluation has been scheduled as follows:

Appt. Date: 9/28/2022
Time: 9:00 AM Please arrive 15 minutes prior.
Physician: Sanjeev Garg, MD (Neurology)

Location: IMX Medical Management Services, Inc.
333 East City Avenue, Two Bala Plaza
Suite 600 (Enter via St. Asaph's Road)
Bala Cynwyd, PA 19004

The referring company, as listed above on this letter, will obtain and provide the necessary medical records to IMX for the doctor to review; but any additional X-ray films, MRIs and/or any other pertinent medical records you may have in your possession is encouraged to bring with you on the day of your appointment. If you have any questions or concerns, please contact us at 1-484-329-7000.

If your client requires an interpreter or planning to have anyone accompany you to this evaluation please contact IMX at least 72 hours prior to the evaluation as policies regarding this may vary by physician. If planning to bring anyone to this evaluation, including a nurse case manager, please contact our scheduling department for approval.

If you are not able to keep the scheduled appointment contact IMX upon receipt of this letter. Failure to provide sufficient notice of at least 3 business days will result in a "Late Cancel" fee in the amount of \$845.00 which will be the responsibility of you (claimant) or your client. Failure to appear for the examination will result in a "No-Show" fee in the amount of \$845.00 which will be the responsibility of you (claimant) or your client.

Please bring one form of Photo Identification with you and inform the receptionist upon signing in which Physician you are there to see. If you have any questions or concerns, please contact us at 1-484-329-7000. **For directions please reference our website, www.imxmed.com, click on the office location tab.**

Sincerely,
Gina LaRubbio
IMX Medical Management Services
cc: Michelle V. Barone / City of Philadelphia / Law Department

Addressee:

Nia Holston
ABOLITIONIST LAW CENTER
PO Box 31857
Philadelphia, PA 19104

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LOCAL RULE 26.1 CERTIFICATION

Pursuant to Local Rule 26.1, the undersigned, Michelle V. Barone, Esquire, hereby certifies that after reasonable effort, I was unable to resolve the dispute regarding the independent medical examinations of Plaintiff sought by Defendant.

Date: September 21, 2022

/s/ Michelle V. Barone

Michelle V. Barone, Esquire

Assistant City Solicitor

Pa. Attorney ID No. 318237

City of Philadelphia Law Department

1515 Arch Street, 14th Floor

Philadelphia, PA 19102

(215) 683-5217

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CERTIFICATE OF SERVICE

I hereby certify that on the date below, Defendant's Motion to Compel Independent Medical Examination was filed via the Court's electronic filing system and is thus available for downloading and served upon the parties of record.

Date: September 21, 2022

/s/ Michelle V. Barone

Michelle V. Barone, Esquire

Assistant City Solicitor

Pa. Attorney ID No. 318237

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